

## **Motion Filed to Consider Modifications of Missouri River Flows**

WASHINGTON (July 20) - The Department of Justice announced that it will file a motion today with the United States District Court for the District of Nebraska asking that Court to consider modification of an order issued in May 2002. The order issued by the Court in May 2002 requires the Corps to operate the Missouri River Mainstem System to maintain sufficient flows for navigation as called for under the existing Missouri River Master Manual and current Annual Operating Plan. The Nebraska court order was recently upheld in a decision issued on June 4, 2003 by the United States Court of Appeals for the Eighth Circuit.

The motion to be filed with the Court today will ask the Nebraska District Court to modify its May 2002 order to allow the Corps to operate the Missouri River Mainstem System to comply with a recent conflicting opinion issued on July 12, 2003, by the United States District Court for the District of Columbia. The order issued by the United States District Court for the District of Columbia prohibits the Corps from implementing the summer flows set forth in the 2003 Annual Operating Plan and 2003 Supplemental Biological Opinion and requires that the Corps' releases from Gavins Point Dam be modified to comply with a 2000 Biological Opinion from the United States Fish and Wildlife Service (USFWS). On Friday, July 18, 2003, the United States Court of Appeals for the District of Columbia refused to stay the DC District Court's order. A hearing has been set for Monday, July 21, 2003 before the United States District Court for the District of Columbia to determine compliance with the terms of that court's order.

The USFWS 2000 Biological Opinion requires releases from Gavins Point Dam to be reduced to 25,000 cubic feet per second (cfs) from June 21 to July 15, 21,000 cfs from July 15 to August 15, and 25,000 cfs from August 15 to September 1. Restriction on releases would end on September 1 and flows could then be increased to support minimum downstream flow targets for navigation and other project purposes. The low flow releases from Gavins Point that are set forth in the 2000 Biological Opinion will not be sufficient to maintain minimum downstream navigation flows through September 1, absent unusually high precipitation downstream from Gavins Point.

The Corps believes that the 2003 Supplemental Biological Opinion is legally and scientifically valid. Operation of the Missouri River system has not resulted in any loss of the listed tern or plover this year. However, if the Nebraska District Court approves modification of its 2002 order, flows from Gavins Point would be reduced in accordance with the order issued by the United States District Court of the District of Columbia.

Accordingly, notice is hereby provided that, pending a decision by the Nebraska District Court, all river users downstream from Gavins Point should take

appropriate actions to secure commercial and recreational vessels as it is anticipated that the above flows will not be sufficient to maintain commercial navigation from Sioux City, Iowa, to St Louis, Missouri, a distance of 732 miles.